

July 27, 2004

NANCY WHITTEN
P O BOX 1294
ISSAQUAH WA 98027

Subject: Complaint Filed Against Karen Moran, PDC Case No. 04-294 and Mike Rundle,
PDC Case No. 04-295

Dear Ms. Whitten:

The Public Disclosure Commission staff has completed its investigation of your complaints, received October 27 and 29, 2003 and January 9, 2004, alleging that Karen Moran and Mike Rundle sponsored political advertising that on three occasions contained false statements of material fact about you, in violation of RCW 42.17.530.

The PDC staff reviewed your allegations in light of the following statute:

RCW 42.17.530 prohibits a person from sponsoring with actual malice political advertising that contains a false statement of material fact about a candidate for public office. Any violation must be proven by clear and convincing evidence.

RCW 42.17.505 states that "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity."

You alleged that Karen Moran and Mike Rundle sponsored political advertising that falsely attributed the October 17, 2003 Trail Buster postcard mailing to you. The postcard urged voters to vote for David Irons, Jr., Karen Moran and Mike Rundle because they were "trail busters" who wanted to protect the interests of lakefront homeowners opposing the permit requests for the trail. The postcard stated it was paid for by "Citizens to Elect Karen Moran." Ms. Moran denied responsibility for the mailing and blamed her opponent in a press release and an email. You stated that Karen Moran made a false statement of material fact about you when she stated in an October 19th press release that her opponent was responsible for the Trail Buster post card. You alleged that by using the word "opponent," Ms. Moran was saying that you were responsible for the mailing.

You also alleged that Mike Rundle made a false statement of material fact about you when, on October 19, 2003, he posted on his web site an email from a Karen Moran supporter that included Ms. Moran's response to the email she had received. You alleged that the email with Ms. Moran's response falsely accused you of sponsoring the postcard mailing known as the "Trail Buster" postcard. You further alleged that when Mr. Rundle posted a revised version of the email response on his web site, he again falsely accused you of sponsoring the Trail Buster postcard.

You alleged that when Ms. Moran posted a revised press release on her web site on October 28th she made additional false statements about you because she again said her "opponent" was responsible for the mailing. You also stated that an October 31st flyer to the Sammamish Residents in the 244th Corridor made additional false statements about you by again accusing you of being responsible for the Trail Buster postcard. Ms. Moran has denied sponsoring that flyer.

We found that:

- It is not known who authored, produced or distributed the Trail Buster postcard. Although the sponsor identification on the postcard attributed it to "Citizens to elect Karen Moran," Ms. Moran has denied responsibility for it, noting her belief that someone opposing her was likely responsible for the mailing. You have also denied mailing the piece. PDC staff contacted each vendor reported by your campaign and by Ms. Moran's campaign for which a printing expenditure was reported. None of the vendors reported printing the Trail Buster postcard. Staff also reviewed your campaign records and Ms. Moran's campaign records and did not find evidence that either campaign sponsored the postcard.
- Karen Moran issued a press release on October 19, 2003, stating that the Trail Buster postcard was not produced by her campaign. She stated, *"The flyer is a malicious and inflammatory tactic by my opponent to misrepresent my position on a very sensitive issue...I will be attempting to determine for certain the party responsible for this mailing and I will be contacting the U.S. Postal Service regarding the filing of federal charges for mail fraud..."* (Emphasis added) By stating that she was attempting to determine the identity of the ad's sponsor, Ms. Moran made it clear she was not categorically accusing you of sending out the ad.
- On October 19th, Ms. Moran responded to an email from a supporter who asked about the postcard mailing. She responded with, *"The mailing you received was a malicious attack from my opponent...I would appreciate your telling everyone you know that this was not my literature, and point out the level to which my opponent has sunk in an attempt to win this election."* (Emphasis added) Mike Rundle posted the email along with Karen Moran's response on his web site on October 19th.

- On October 28, 2003, Karen Moran amended the press release that was posted on her web site by deleting the words *“by my opponent”* so that it read, *“The flyer is a malicious and inflammatory tactic to misrepresent my position on a very sensitive issue.”*

By making these changes, Ms. Moran attempted to clarify her belief that the mailing was sent by someone who opposed her candidacy, and that she was attempting to find out the person responsible for the mailing.

- Mr. Rundle stated that he spoke with you by telephone on October 23, 2003, and that you objected to the original email. He then posted an amended email on his web site on or about October 28, 2003, but left the date of the email as October 19, 2003. The amended email deleted the words, *“a malicious attack from my opponent,”* so that it read, *“The mailing you received was attempting to confuse the voters regarding my position on the issues.”* The amended email also deleted the words, *“my opponent has sunk”* so that it read, *“I would appreciate your telling everyone you know that this was not my literature, and point out the level to which someone has sunk in an attempt to win this election.”*
- On October 31st, a flyer titled, “Letter to Sammamish Residents in the 244th Corridor” was distributed to voters. The flyer stated in part, *“It is a fabricated, malicious forgery mailed by my opponent and/or her supporters...Please support me in helping ensure that my opponent, and Mr. Hamilton don’t use these tactics to gain control of our City.”* Although the October 31st flyer stated it was paid for by the “Committee to Elect Karen Moran,” Ms. Moran claimed the flyer was not produced or authorized by her campaign. Ms. Moran’s husband, Richard Moran, stated that he wrote a similar document, but denied producing or distributing the actual flyer in question.

Ms. Moran stated that she never claimed the Trail Buster postcard was authored by you, and never mentioned you by name. Both you and Ms. Moran have denied responsibility for the Trail Buster postcard, and have denied knowledge about who sent out the postcard. We were not able to determine who produced and distributed the initial Trail Buster postcard. Although Ms. Moran initially alleged that the Trail Buster postcard was sent out by her opponent, she also made it clear that she did not know who was responsible for the mailing, implying that you were not necessarily the author. Thus, there is not clear and convincing evidence that Ms. Moran made a false statement of material fact about you.

Mr. Rundle stated that he posted the email on his web site to provide information to his supporters since he believed the mailing made untrue statements about his campaign. He stated that he spoke to you on the telephone about the postcard mailing, and that after speaking with you, the e-mail response was amended. Because Mr. Rundle immediately corrected the e-mail after realizing that it might be seen as accusing you of sponsoring the Trail Buster postcard, there is not clear and convincing evidence that even if Mr. Rundle’s statements were false, that he acted with actual malice.

Complaint Against Karen Moran, Case No. 04-294 and
Mike Rundle, Case No. 04-295

Page - 4 –

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaints against Karen Moran and Mike Rundle.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: Karen Moran
Mike Rundle